

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
)	

**Reply Comments Of
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC**

INDEX

	<u>Page</u>
I. Summary Of Reply Comments.	3-5
II. Section 332(C) Provides No Barrier To A Requirement That All Eligible Telecommunications Carriers (ETCs) Provide Equal Access Service.	5-7
III. The Requirement That All ETCs, Including CMRS ETCs, Provide Equal Access Service Is In The Public Interest.	7-18
A. The Benefits Of Requiring Equal Access Outweigh The Costs Of This Requirement.	8-11
• Wireless Competition Will Not Be Diminished In Rural Areas Because Of An Equal Access Obligation And The Costs Of That Obligation For CMRS ETCs	
• Customers Will Benefit From The Imposition Of An Equal Access Obligation On CMRS ETCs	
B. CMRS ETCs Are Not Harmed Or Disadvantaged Because The Costs Of Equal Access Can Be Recovered From IXC's That Benefit From Equal Access. Consequently, The Size Of The USF Will Be Unaffected.	11-13
C. CMRS ETC Equal Access Is A Service That Customers Would Use To Gain Access To More Reasonable Long Distance Rates If It Were Available.	13-14
D. Equal Access Does Not Prevent CMRS ETCs From Offering Bundles Of Local And Long Distance Minutes. The Opponents Of Equal Access Overstate The Difficulties Of Implementation.	14-16
E. Equal Access Does Not Provide A Barrier To Efficient Competition By Creating A Bias In Favor Of Wireline Technology. Equal Access Is A Universal Service, Not A Competitive Mechanism.	17-18
IV. Equal Access Complies With The Universal Service Definition Guidelines Provided In The Act.	19-20

(I)

SUMMARY OF REPLY COMMENTS

FW&A believes the Act's requirements are clear and require that equal access be added to the list of supported services. FW&A's reply comments show that:

1. Section 332(c)(8) gives the Commission the authority to require CMRS ETCs to provide equal access if it finds that such a requirement is in the public interest. The excessive per minute rates charged by CMRS ETCs for long distance calling, in violation of Section 254(b), requires such a finding by the Commission.
2. The public interest and Sections 254(b)(1) and 254(b)(3) of the Act require that equal access be provided by all Eligible Telecommunication Carriers (ETCs), including Cellular Mobile Radio Service (CMRS) ETCs in order to insure that consumers in rural, high cost and insular areas have access to affordable interexchange services that are similar in price and services to those available in urban areas. Far from being a barrier to efficient competition that would harm consumers and competitive choice, the requirement to provide equal access by CMRS ETCs allows customers, through the operation of market forces, to lower the rates they pay for service.
3. Rural, high cost and insular customers will benefit from the imposition of an equal access obligation on CMRS ETCs through access to lower rates for long distance services – (unless equal access is a requirement for all ETCs, CMRS ETCs will extract monopoly profits from their captive long distance customers, in violation of Section 254(b).). Rather than face the “Hobson’s” choice of paying 39 to 45 cents per-minute for additional minutes and long distance charges of 20 to 30 cents per minute or buying larger blocks of time, if equal access were imposed on CMRS ETCs, customers can purchase lower blocks of cellular time and lower their long distance charges substantially by avoiding the originating and terminating charges or the charges for higher blocks of time.

Carrier	Web Site	Basic Rate	Anytime Minutes	Addl. MOU Rate	LD Rate	Roaming
Cellular One	www.cellularone.com *	\$20.00	60	39 cents		59 cents
US Cellular	www.uscc.com	\$25.00	125	40 cents	30 cents	69 cents
AT&T	www.attws.com	\$19.99	45	45 cents	20 cents	69 cents
Sprint	www.sprintpcs.com	\$35.00	300	40 cents	25 cents	50 cents
Verizon	www.verizonwireless.com	\$25.00	125	45 cents	20 cents	69 cents
Nextel	www.nextel.com	\$35.99	100	40 cents	20 cents	NA

* Cellular One a.k.a. Western Wireless

4. Given the availability of support funding and ability to recover the costs for the equal access use of their network from IXC's, CMRS ETC's can easily continue to serve rural areas profitably, even with a requirement to provide equal access service. It is unlikely that localized rural CMRS carriers and national CMRS carriers that are entering rural markets will abandon their business plans and exit these markets if they seek ETC status and are required to provide equal access service. The imposition of equal access will have no effect on the size of the USF because CMRS ETC's may recover their costs via access charges to the IXC's that use their network.
5. A requirement to provide equal access will not hamper the ability of a CMRS ETC to offer bundles of any-distance minutes, but does constrain their ability to extract monopoly profits from captive long distance customers. Implementation of equal access for CMRS ETC's will not create regulatory uncertainty.
6. Interexchange competition through equal access was not solely an antitrust remedy nor was interexchange competition for competition's sake the goal of equal access. Instead, the goal of the equal access policy was a universal service goal – reasonable and affordable long distance services, with rates and services comparable to those offered in urban areas.
7. Equal access complies with the Act's definitional principles in Section 254(c), and therefore must be added to the list of supported services:
 - (A) A customer's ability to select and change interexchange carriers through equal access service precludes CMRS ETC's from charging high, monopolistic interexchange rate levels to captive customers in rural, insular and high cost areas. This allows reasonably priced access to

- educational, public health and public safety services, where those services must be accessed via long distance service.
- (B) The fact that equal access was mandated as a customer service is as irrelevant as the fact that one-party service was mandated by many State Commissions. What is relevant now is that equal access, like one-party service, is provided to, used by, or subscribed to by a substantial majority of residential customers.
 - (C) With the exception of CMRS carriers, all LECs are deploying facilities necessary to provide equal access in their telecommunications networks, and thus equal access complies with principle (C).
 - (D) Access to interexchange services in rural, insular and high cost areas, whose rates are affordable and comparable to those in urban areas is defined by the Act, Section 254(b), to be in the public interest. In compliance with principle (D), such access to reasonably priced long distance services is only possible through equal access.

(II)

SECTION 332(C) PROVIDES NO BARRIER TO A REQUIREMENT THAT ALL ELIGIBLE TELECOMMUNICATIONS CARRIERS (ETCs) PROVIDE EQUAL ACCESS SERVICE

Commenters opposing adding equal access to the definition of universal service¹ claim that requiring CMRS ETCs to provide equal access ignores the plain language of Section 332(c) of the Act, which states that Cellular Mobile Radio Service (CMRS) providers “shall not be required to provide equal access”. They claim that such a requirement would be contrary to the mandate and legislative history of Section 332(c)(8) of the Act.

¹ Cellular Telecommunications & Internet Association (CTIA); Centennial Communications Corp. (Centennial); Dobson Communications Corporation (Dobson); Florida Public Service Commission (FPSC); New York Department of Public Service (NYDPS); NEXTEL Communications, Inc. and NEXTEL Partners, Inc. (NEXTEL); Rural Cellular Association and Alliance of Rural CMRS Carriers (RCA/ARC); Sprint Corporation (Sprint); United States Cellular Corporation (USCC); Verizon Wireless; Western Wireless Corporation (Western Wireless).

These commenters are wrong because they ignore other provisions of the Act that allow the Commission to impose an equal access requirement on CMRS providers that request and are granted ETC status.

- Section 332(c)(8) of the Act provides that if subscribers are denied equal access, and if that denial is contrary to the public interest, then the Commission shall require CMRS carriers to provide equal access.
- Currently CMRS providers that request and receive ETC status deny equal access to the long distance provider of the customer's choice and instead constrain the customer's choice to one monopoly long distance provider selected by the CMRS ETC.
- Such a constraint by the CMRS ETC is not in the public interest. The CMRS provider and its selected Interexchange Carrier (IXC) may and often do establish rates for the use of long distance service in rural, high cost and insular areas that are not reasonable and affordable and that are not reasonably comparable to those offered in urban areas. The denial of equal access by CMRS ETCs and the resulting unaffordable and monopolistic rate levels charged to captive customers is at odds with the requirements of Section 254(b) of the Act.

The objective of the universal service sections of the Act was to insure that customers in rural, high cost and insular areas have just, reasonable and affordable rates and service choices comparable to those offered to customers that live in more urban areas of the country. At odds with Section 254, CMRS ETCs may now, and often do charge monopolistic rate levels for access to long distance service in rural, high cost and insular

areas.² Customer choice of a long distance carrier through equal access is the only market approach that will insure that customers have access to reasonable and affordable long distance rates, if such rates are not provided by the CMRS ETC. The public interest and Section 254(b) of the Act require the Joint Board and Commission to exercise the provision of Section 332(c)(8) that would require CMRS ETCs to provide equal access service to their customers.

In its comments, USCC states its view that “There is no reason to believe that the congressional determination [in Section 332(c)(8)] would change just because a wireless carrier becomes an ETC.”³ At odds with USCC’s view, there is every reason to believe that Congress would require the provision of equal access by all ETCs, including wireless ETCs, if that is the only way to insure that customers in rural, high cost and insular areas have access to reasonable and affordably priced long distance services. In fact, Congress included specific provisions in Section 332(c)(8) that allow the Commission to require that CMRS providers that are ETCs provide equal access in order to insure that the Congressional universal service requirements in Section 254 are met.⁴

² For a listing of those monopolistic rate levels for certain CMRS carriers refer to footnote 8 of these reply comments.

³ Comments of USCC, filed April 14, 2003, page 2, information in brackets added for clarity.

⁴ Centennial, in support of its view that equal access cannot be required for CMRS ETCs, states in its comments that “...if ‘clear evidence of affirmative congressional intent is lacking, we cannot infer that Congress has legislated silently.’” Further, Centennial states that “...a basic canon of statutory construction is that ‘[n]o intent may be imputed to the legislature in the enactment of a statute other than such as is supported by the face of the statute itself.’” At odds with Centennial’s view, no inference of Congressional intent is necessary to reach the conclusion that equal access must be required of CMRS ETCs. Congress was specific in allowing this action by the Joint Board and Commission:

- Section 332(c)(8) allows the imposition of equal access on CMRS carriers if such an action is in the public interest.
- For carriers that seek to be ETCs, including CMRS carriers, Section 254 defines the public interest as providing access to reasonable and affordable long distance services for customers in rural, high cost and insular areas, comparable to those offered in urban areas.
- CMRS ETCs may and often do provide customer access in rural, high cost and insular areas at unaffordable rate levels, at odds with the provisions of Section 254.

(III)

THE REQUIREMENT THAT ALL ETCs, INCLUDING CMRS ETCs, PROVIDE EQUAL ACCESS SERVICE IS IN THE PUBLIC INTEREST

Commenters opposing the addition of equal access service as a requirement for all ETCs, including CMRS ETCs, claim that such an action is not in the public interest. However, these assertions are simply specious rhetoric that do not support the notion that the public interest will be harmed if CMRS ETCs are required to provide equal access service to their customers. In fact, such a requirement will serve the public interest.

A. The Benefits Of Requiring Equal Access Outweigh The Costs Of This Requirement.

Commenters opposing the equal access requirement assert that the increase in costs to provide this requirement will have no offsetting benefits. They assert that the increased costs will deter CMRS carriers from providing service in rural areas and thus harm customers by reducing competition and choice in rural, high cost and insular areas.⁵ These assertions have no basis in fact.

- **Wireless Competition Will Not Be Diminished In Rural Areas
Because Of An Equal Access Obligation And The Costs Of That
Obligation For CMRS ETCs**

Imposing an equal access requirement on only CMRS ETCs will have little or no effect on wireless competition in rural areas. There are, as the Commission has noted in other proceedings involving the state of competition in rural areas, a number of wireless

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- Consequently, based on the plain language of the Act, the Joint Board and Commission may impose an equal access requirement on CMRS carriers that are ETCs in order to insure customer choice of long distance carriers and thus access to affordably priced long distance services.

⁵ CTIA; Dodson; FPSC; RCA/ARC; Sprint; Verizon Wireless; Western Wireless

carriers (both national and local) that provide competitive service in rural areas. There will be no equal access requirement for these CMRS providers unless they seek ETC status. It is unlikely these CMRS carriers will abandon the rural markets when only a few CMRS providers seek ETC status and are required to provide equal access service. Further, even the CMRS ETCs that are required to provide equal access service are unlikely to exit the rural markets and abandon their ETC status. The lower costs of these carriers⁶ combined with the substantial revenue they receive from (a) Their service charges, (b) Universal service funding and (c) Additional access revenues that will be received from Interexchange Carriers (IXCs) that use their network as a result of equal access, provide a powerful incentive to continue to provide service, even with the additional equal access costs that would be incurred.

- **Customers Will Benefit From The Imposition Of An Equal Access Obligation On CMRS ETCs**

The major benefit of requiring CMRS ETCs to provide equal access is that customers will have a choice of long distance carriers resulting in access to reasonable rates for long distance service in rural and high cost areas. In their comments, CMRS carriers extol the virtue of the bundled local and long distance minutes.⁷ For example, RCA/ARC states:

“Wireless customers presently have access to buckets of minutes that are so economical that no separate local and long distance plans would be lower in cost by any reasonable expectation.”

What RCA/ARC and other CMRS providers neglect to point out, is that to avoid the exorbitant originating and terminating per-minute charges (for example 39 to 45 cents per-minute for each originating and terminating minute and 20 to 30 cents per minute for

⁶ As RCA/ARC points out on pages 4 and 5 of its comments CMRS providers are lower cost providers “...CMRS operators can reach remote terrain more efficiently than carriers deploying local loops, thus reducing the cost to the subscriber.”

long distance)⁸ imposed by CMRS ETCs for all (local and long distance) minutes exceeding the basic minutes purchased (for example 60 minutes for \$20.00 per-month), a customer must purchase larger blocks of time. The only alternative is to pay the unreasonable rate per-minute if the customer's usage exceeds the basic package of minutes. In other words, the customer is faced with the "Hobson's" choice of paying (a) More for a larger block of time or (b) More per-minute. Apparently, the actual situation faced by wireless customers is not as economical as RCA/ARC claims.

It is a clear violation of the public interest requirements of Section 254 of the Act for CMRS ETCs to impose this monopolistic and unreasonable rate choice for access to long distance services. Instead, at odds with RCA/ARC's claims, with equal access, customers of the CMRS ETC would be able to subscribe to a lower and less expensive block of minutes. The customer could use those minutes for local calling and avoid the unreasonable per-minute charges for originating long distance minutes above the block of time and the per-minute long distance charges (shown in footnote 8), by selecting a long distance carrier with more reasonable and affordable per-minute charges (for example, 5 to 15 cents per originating minute). In addition, the customer would avoid the CMRS

⁷ CTIA; Dobson; NEXTEL

⁸ Basic local calling area information for the following cellular providers shows that the rates for access to long distance services are not in conformance with the reasonable and affordable requirements of Section 254:

Carrier	Web Site	Basic Rate	Minutes	Addl. MOU Rate	LD Rate	Roaming
Cellular One	www.cellularone.com *	\$20.00	60	39 cents		59 cents
US Cellular	www.uscc.com	\$25.00	125	40 cents	30 cents	69 cents
AT&T	www.attws.com	\$19.99	45	45 cents	20 cents	69 cents
Sprint	www.sprintpcs.com	\$35.00	300	40 cents	25 cents	50 cents
Verizon	www.verizonwireless.com	\$25.00	125	45 cents	20 cents	69 cents
Nextel	www.nextel.com	\$35.99	100	40 cents	20 cents	NA

*Cellular One, a.k.a. Western Wireless - Although an additional 250 nighttime and 250 weekend minutes come with the basic plan, only 60 minutes are available for use at anytime of the day. Western Wireless (Cellular One) has been designated as an ETC in areas where it has requested this designation in Kansas.

ETC's unreasonable charge for terminating long distance minutes (for example, 39 to 45 cents per-minute).⁹

The choice to select and have access to a long distance carrier with reasonable and affordable rates is clearly in the public interest and is a requirement of Section 254 of the Act. Far from being a barrier to efficient competition that would harm consumers and competitive choice, the requirement to provide equal access by CMRS ETCs allows customers, through the operation of market forces, to lower the rates they pay for service. This issue is not about an attempt to "...keep wireless service alternatives out of rural America unless and until they agree to forgo the opportunity for USF funding" and is not about advocacy to "...advance rural ILEC interests..." as asserted by NEXTEL in its comments¹⁰, but is about providing competitive choices to rural consumers so that they may have access to reasonable and affordable long distance rates.

RCA/ARC states on page 4 of its comments that "...promoting competition for low cost long distance services – is unrelated to the definition of supported services." RCA/ARC is wrong. Section 254 of the Act requires reasonably priced access to long distance services for rural, high cost and insular areas. The only way to insure this access at reasonable prices is to require an equal access obligation for all ETCs and allow customers to select reasonably priced long distance services.

⁹ Sprint claims on pages 9 and 10 of its comments that "If wireless carriers were required to provide equal access, customers would begin to pay two charges – airtime plus the IXC's charges – where today they pay only one charge (airtime)." CTIA makes a similar assertion on page 9 of its comments. Both Sprint and CTIA are wrong. The customer, as is the case with wireline customers, would be billed for their services by the selected IXC. If a customer has selected and is using an IXC for its long distance service, the CMRS carrier has no basis to charge the customer retail airtime charges for either originating or terminating airtime. Instead, the CMRS carrier becomes a wholesale access provider for the IXC. The CMRS provider would charge access charges to the IXC for the IXC customer's originating and terminating access. The Commission may need to revisit its decision in the Sprint Petition that dealt with access charges paid to CMRS providers in order to insure that IXCs are required to pay legitimate CMRS access charges for equal

B. CMRS ETCs Are Not Harmed Or Disadvantaged Because The Costs Of Equal Access Can Be Recovered From IXC's That Benefit From Equal Access. Consequently, The Size Of The USF Will Be Unaffected.

There will be additional costs, as Dobson discusses in its comments¹¹ that CMRS ETCs will incur to provide equal access. These costs can, however, be recovered in a manner similar to that used by the wireline carriers when they converted to equal access. CMRS ETCs that must meet the equal access requirement can add an incremental rate element to the access rate they charge to IXC's that originate and terminate traffic using the CMRS ETC's network. This charge would be paid by the long distance providers that benefit from the CMRS ETC's equal access requirement and would have no impact on customers of the CMRS provider. Because their rates are largely unregulated, CMRS ETCs would be free to implement this charge to recover their costs.¹² There would be no need for a "federally mandated assessment" discussed by Centennial in its comments.

access traffic. (Sprint PCS and AT&T Corp. Petitions for Declaratory Ruling Regarding CMRS Access Charges)

¹⁰ NEXTEL comments, pages 8 and 9.

¹¹ Dobson comments, page 19. Dobson notes correctly that there will be costs for new software and hardware and for translations. However, there is no information that these costs will be any more substantial than the costs incurred by the wireline carriers when they implemented equal access. Dobson also claims that it will have to make wholesale changes to its billing systems to account for long distance charges on a per-customer, per-carrier basis. This is incorrect. No changes will be necessary to Dobson's customer billing system assuming that the IXC's bill customers directly for long distance service. If the IXC's do decide to use Dobson to bill-and-collect the long distance charges, Dobson will collect a billing-and-collection fee from the IXC to cover its billing system changes.

¹² Sprint at page 7 of its comments asserts that "...CMRS providers....under current rules, would not have a mechanism for recovering the potentially huge costs associated with implementation of equal access." This is a curious statement by Sprint, because CMRS carriers are always quick to point out that their rates are not regulated. Presumably then, Sprint would need no "regulatory" mechanism for recovery, and can, on its own, create a new rate element to recover these costs from IXC's. On page 8 of its comments, Sprint observes that CMRS ETCs might seek to have the costs recovered from the USF, thus increasing the size of the fund. This recovery mechanism, however, is unnecessary because the CMRS providers can recover their costs from the IXC's. Finally Sprint (again on page 8), states that "...disallowing such costs – would place CMRS providers at a severe financial disadvantage..." Again, Sprint's statement is misplaced. For a CMRS provider, there is no regulator that would "disallow" the costs and place the CMRS provider at a "severe financial disadvantage". The CMRS provider controls whether or not it chooses to recover these costs through the rate structure that is solely under its control.

Because CMRS ETC equal access costs should be recovered from IXC's (as they were for wireline LECs), these costs will have no effect on the universal service fund. As a result, AT&T's comments (page 4), the NYDPS' comments (page 3) and Sprint's comments (page 2) incorrectly infer in their comments that equal access costs incurred by CMRS ETCs will cause the size of the universal service fund to increase. Similarly, Nextel's comment (page 2) that: "The addition of equal access to the list of 'core services' could further inflate USF funding" is incorrect. If recovered properly, CMRS ETC costs should have no impact on universal service funding or CMRS ETC retail customer rates.

C. CMRS ETC Equal Access Is A Service That Customers Would Use To Gain Access To More Reasonable Long Distance Rates If It Were Available.

A number of commenters infer that CMRS ETC equal access service is not in the public interest because there has been no showing of a customer demand for this service.¹³ Sprint also observes on page 9 of its comments that if a customer is dissatisfied with the long distance service available in conjunction with a particular carrier, the customer may select another carrier or use their wireline phone, which has equal access.

Whether or not customers are sophisticated enough to demand equal access, there is very likely customer dissatisfaction with the unreasonable CMRS per-minute rate levels. The Act requires that access to long distance services with reasonable and affordable rate levels in rural areas be provided by ETCs. For wireline ETCs, the universal service public policy objective to have reasonable and affordable interexchange long distance services in all areas of the nation (urban and rural) was accomplished by the

¹³ CTIA, page 4; RCA/ARC, page 8; Sprint, page 9

Commission's mandate to require wireline equal access as a service for customers. This objective can only be accomplished for CMRS ETCs through the same mandate.

Sprint's notion that all a customer has to do is change CMRS providers to obtain rural access to reasonably priced long distance service is misleading and wrong. CMRS rate levels are similar (see footnote 8) and therefore changing carriers would accomplish very little. CMRS carriers have also erected barriers through one to two year contractual periods and termination charges that deter customers from changing their CMRS carrier. Sprint's other solution, that CMRS customers, if they want access to reasonably priced long distance service, can use their wireline service to provide that access, is not a viable option for all CMRS customers and in any case is a poor substitute for customer choice through CMRS ETC equal access.

D. Equal Access Does Not Prevent CMRS ETCs From Offering Bundles Of Local And Long Distance Minutes. The Opponents Of Equal Access Overstate The Difficulties Of Implementation.

A number of the commenters allege that equal access will harm consumers by preventing CMRS ETCs from providing services customers desire such as bundles of local and long distance minutes. USCC asserts that:

“Under equal access, no wireless ETC could possibly continue to offer its existing regional and national service packages, as all of them involve what would now be considered ‘long distance’ calls subject to ‘equal access.’ Such calls would have to be handed off to IXC's wherever the

‘boundary’ was imposed...Carriers would have to modify or eliminate their existing pricing structure...”¹⁴

Further, these commenters assert that equal access would create regulatory uncertainty while local versus toll calling boundaries are defined for CMRS ETCs. USCC claims that:

“This requirement would also re-introduce the complex...debate over when a wireless call would be considered subject to the ‘equal access’ requirement, that is, when it would be ‘handed off’ to an IXC. At present, wireless carriers and IXCs make such arrangements to their mutual benefit...”¹⁵

Verizon Wireless argues that:

“If wireless ETCs are required to provide equal access, they may be less able to negotiate favorable bulk purchasing contracts with inter-exchange service providers, and less able to pass those savings onto customers....The benefits customers receive from CMRS offerings of bundles of wireless minutes, which often include long distance at no extra charge, will be lost with an equal access requirement.”¹⁶

Based on these claims and assertions, it would appear that the imposition of equal access on CMRS ETCs would result in dire consequences for consumers (loss of bundled minute plans) and would create further regulatory uncertainty that would impede the offering of new and innovative CMRS services.¹⁷

Fortunately, these assertions have no basis in fact and are simply the rhetoric of providers that are trying to avoid imposition of the equal access obligation. Implementation of

¹⁴ Comments of USCC, page 6. Similar comments are made by Western Wireless on pages 3 and 4 of its comments.

¹⁵ Id., page 5.

¹⁶ Comments of Verizon Wireless, page 5. Similar assertions are made by Western Wireless on page 4 of its comments.

¹⁷ On page iii of its comments, CTIA claims that equal access would “...open a host of new regulatory issues...the Commission would need to re-examine the right of CMRS carriers to collect access charges...the Commission would also have to conduct a market-by-market review to define the appropriate geographic scope of a wireless ‘local service provider.’”

equal access will in no way affect the rate structure (bundles of local and long distance minutes that the CMRS ETCs provide. USCC is wrong in its assertion that regional and national plans could no longer be offered. Under equal access, customers could and likely many will (because of the bundled regional and national plans that are offered), select the CMRS ETC as their long distance provider. As a consequence, there is absolutely no effect of equal access on the bundled rate plans of the CMRS ETCs.¹⁸ Further, the claim that CMRS ETCs will be less able to obtain favorable bulk minute pricing from IXCs for long distance minutes is wrong. All one has to do to see the hollowness of this assertion is to look at the wireline market. Even with equal access, IXCs are more than willing to offer favorable deals on bulk purchases of long distance minutes for resale by other wireline providers. Finally, the claim that there will be a new and protracted debate over the calling area of the CMRS ETCs is also wrong. Long distance calling using an IXC other than the CMRS ETC (calls that would be considered subject to the 'equal access' requirement) would be defined as calls beyond the local calling area defined by the CMRS provider. Again, this has no effect on the CMRS ETC's rate structures or calling areas.

The only real effect of the equal access requirement for CMRS ETCs, is that the rates they charge for service (as shown in footnote 8), may, due to the market pressure from IXC long distance rate levels and the customer's ability to access those rate levels, begin

The Commission will need to affirm the right of CMRS carriers to charge access to IXCs and require that IXCs pay. However, this does not appear to be an insurmountable regulatory obstacle. The market-by-market review that CTIA discusses is unnecessary.

¹⁸ On page 11 of its comments, CTIA states that: "The Imposition of Equal Access on CMRS Carriers Will Undermine [the] Commission's Integrated Service Approach to CMRS". This comment apparently refers to the CMRS ETC's ability to continue to offer bundles of integrated local and long distance minutes. CTIA is wrong. There will be absolutely no effect on the "Commission's integrated service approach" because CMRS ETCs will still have the same ability to offer bundles of local and long distance minutes, or for that matter any rate plan they want.

to decline to more reasonable and affordable levels. The comments by CMRS providers about their economically low rates and the pass through of savings to customers from bulk purchases of minutes may be more valid when this occurs. The real winner when the Commission imposes an equal access requirement on CMRS ETCs will be consumers in rural, high cost and insular areas that will have access through CMRS ETCs to lower rate levels for long distance services.

E. Equal Access Does Not Provide A Barrier To Efficient Competition By Creating A Bias In Favor Of Wireline Technology. Equal Access Is A Universal Service, Not A Competitive Mechanism.

In its comments (page 19), Dobson quotes the Commission's views on competitive neutrality:

“...competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.”

Dobson concludes wrongly (page 19), that this Commission principle means that equal access for CMRS ETCs would competitively disadvantage these wireless providers (and thus create a bias in favor of wireline technology), because it would solely impact the CMRS ETCs:¹⁹

“Since wireline carriers already provide equal access as a result of non-USF-related rules, adding equal access would solely impact wireless carriers.”

¹⁹ Similar observations are made by Sprint: “...it [equal access] would place an undue burden on one segment of the industry (wireless service providers)...such an outcome is clearly contrary to the principle of competitive neutrality...” Sprint comments, pages 2 and 5, information in brackets added for clarity. Western Wireless makes the same assertion on page 3 of its comments.

Other commenters express the view that equal access should not be added to the definition of universal service because it was created for a different, non-universal service purpose – to address competitive concerns in the interexchange market.²⁰

As FW&A pointed out in its comments in this proceeding, the goals of promoting competition and universal service have always had the same public policy objective – to provide lower and more reasonable and affordable customer rate levels by allowing customers a market choice of providers. The universal service public policy objective to have reasonable and affordable interexchange long distance services in all areas of the nation (urban and rural) was accomplished by the Commission's mandate to require wireline equal access as a service for customers. Interexchange competition through equal access was not solely an antitrust remedy to sanction AT&T nor was interexchange competition for competition's sake the goal of equal access. Instead, the goal of the equal access policy was a universal service goal – reasonable and affordable long distance services, with rates and services comparable to those offered in urban areas.

The notion that equal access is a non-USF rule or is solely a competitive rule apparently assumes that the Commission would create interexchange wireline competition for the sake of competition in the long distance market. This is not the case. Instead, the Commission imposed this requirement to spur wireline interexchange competition with the public interest and universal service result being consumer access to more reasonable and affordable long distance rates. This is precisely the result that imposing this obligation on CMRS ETCs will have currently. Customers will benefit from the introduction of long distance competition with the products offered by the CMRS ETCs and they will be able to access more reasonable and affordable long distance rates than

²⁰ FPSC, page 7; NYDPS, page 6; RCA/ARC, page 3; Sprint, page 11; USTA, page 5
April 28, 2003

those shown in footnote 8 of these comments. This is not an issue that involves bias in favor of one service or technology versus another. Instead, it is an issue that involves imposing an obligation that will satisfy Section 254 of the Act and benefit customers in rural, high cost and insular areas. Imposing equal access requirement on CMRS ETCs will serve, as it has for LECs, the public interest.

(IV)

EQUAL ACCESS COMPLIES WITH THE UNIVERSAL SERVICE DEFINITION GUIDELINES PROVIDED IN THE ACT.

Commenters opposing the inclusion of equal access in the definition of universal service argue that equal access does not comply with Section 254 (c) of the Act.²¹ The assertions of these commenters are misplaced. Equal access meets all of the Section 254(c) guidelines:

“(A) Are essential to education, public health, or public safety” – Equal access to affordable interexchange services and rates is essential in rural and insular areas. In those low customer density service areas, there are fewer interexchange carriers that are willing to provide service because of the higher costs and lower aggregate customer usage levels. Simple access to the CMRS ETCs’ long distance services via the CMRS ETC, without customer choice through equal access, will not allow, as rates shown in footnote 8 demonstrate, CMRS ETC customers to access essential educational, public health or public safety organizations at reasonable and affordable rate levels. Unreasonable rate

²¹ AT&T, pages 1 and 2; CTIA, pages 5 to 10; Dobson, pages 15 to 20; FPSC, page 7; NEXTEL, pages 10 to 14; RCA/ARC, page 4; USTA, page 5; USCC, page 4; Verizon Wireless, pages 3 to 5; Verizon, page 4; Western Wireless, pages 8 to 11

levels for interexchange services, as may be charged by monopolistic access to only one interexchange carrier, may deter customers from accessing these essential services.

“(B) Have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers” - Equal access to interexchange carriers is provided to, used by and thus subscribed to, by the substantial majority of residential customers. At odds with comments in the Recommended Decision, equal access is a customer choice service provided by LEC ETCs. As envisioned by the Commission when it mandated equal access, this public interest requirement deters interexchange carriers from charging monopolistic rates for their services. This requirement is essential in rural, high cost and insular areas to insure reasonably priced and comparable services to those provided in urban areas. The fact that this customer service was mandated is as irrelevant as the fact that one-party service was mandated by many State Commissions. What is relevant now is that equal access, like one-party service, is provided to, or subscribed to by a substantial majority of residential customers.

“(C) Are being deployed in public telecommunications networks by telecommunications carriers” - With the exception of CMRS carriers, all LECs are deploying facilities necessary to provide equal access in their telecommunications networks.

“(D) Are consistent with the public interest, convenience, and necessity” - Access to interexchange services in rural, insular and high cost areas whose rates are affordable and comparable to those in urban areas is defined by the Act, Section 254(b), to be in the public interest. Such access to reasonably priced long distance services is only possible through equal access.

Respectfully submitted on behalf of the ILECs by,

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